

**REMARKS/ARGUMENTS**

Claims 1-5, 7 and 11 remain in this application. Claims 8-10 have been canceled. The following issues are outstanding in the Office Action dated July 26, 2004:

1. Claims 1 and 7 were rejected under 35 U.S.C. 103(a) as being anticipated by Argenta et al., WO 94/20041 (“Argenta et al.”);
2. Claims 2-5 and 11 were rejected under 35 U.S.C. 103(a) as being unpatentable over Argenta et al. in view of Collyer et al., U.S. Patent No. 5,973,221 (“Collyer et al.”) and further in view of Gibbins, U.S. Patent No. 6,355,858 (“Gibbins”); and
3. Claims 8-10 were rejected as being unpatentable over Argenta et al. in view of Collyer et al. and in further view of Fleischmann, U.S. Patent No. 6,398,767 (“Fleischmann”).

Each of these will be addressed in turn.

**1. Rejection of Claims 1 and 7 under 35 U.S.C. 103(a)**

In this rejection, the Examiner stated that Argenta et al. teach a method for wound treatment comprising reepithelializing a wound surface with a negative pressure system comprising of a porous pad, a tube with first end in fluid communication with the pad, a second end connected to a vacuum, and a wound drape. The Examiner noted Argenta et al. fail to teach a porous pad predisposed with a wound healing factor. The Examiner stated pre-medicated dressings are well known in the art, and cited Collyer et al. for teaching a porous pad that can be impregnated with antiseptic and/or other medicament. This rejection is respectfully traversed.

Negative pressure wound therapy, as described in the specification, operates to *remove* fluids from a wound site. *See Pg. 4, ll. 14-24.* Absorptive dressings function to absorb excess wound fluid while maintaining a moist wound environment, but inherently retain the fluid in the dressing itself. Such dressings, when loaded with a medicament, function as a local reservoir of medicament and allow the medicament to disperse into the wound fluid. This necessarily includes both the absorbed fluid *and* any fluid remaining in contact with wound tissue.

Argenta et al. specifically teach suction at the wound site as the operating method for its system. *See, for example, pg. 6, ll. 8-14, and pg. 7, ll. 13-18 of Argenta et al.* But Collyer et al. is negative pressure abhorrent. This is obvious, inasmuch as any negative pressure applied to Collyer et al. (e.g. through the combination with Argenta et al.) would necessarily *remove all the medicament* and therefore not only defeat the purpose of Collyer et al. (to have localized medicament in the dressing), but also *fail to medicate the wound* due to the medicament being removed by negative pressure. Further, it is apparent that for the proposed combination to function, the volume of the localized salve necessarily present in order to maintain contact with a

wound surface while under negative pressure would continuously need to be replaced, be immobilized within the dressing, or be extremely large (and burdensome) in volume, all of which require further inventive art to accomplish in the vacuum dressing environment, or at least *some* motivation to be suggested in these references. These additional requirements would further discourage any person of skill in the art from combining the two inventions, or at the least, would require undue experimentation to have any reasonable chance for success.

Neither Argenta et al., nor Collyer et al. even recognize the problem identified and solved by the present invention (of medicating a wound while utilizing negative pressure to remove all fluids from the wound), much less suggest, teach or motivate one to combine a naturally aspirating dressing of Collyer et al. having a liquid medicament layer with a negative pressure system of Argenta et al. Any such combination would inherently fail without undue experimentation.

Accordingly, given the failure of the proposed combination to function, and the necessary experimentation and modification not otherwise taught, suggested or disclosed in either Argenta et al. or Collyer et al., claims 1 and 7 are submitted to be allowable over the art made of record.

## **2. Rejection of Claims 2-5 and 11 Under 35 U.S.C. 103(a)**

The Examiner rejected claims 2-5 and 11 as being upatentable over Argental et al. in view of Collyer et al. and in further view of Gibbins. The Examiner noted neither Argenta et al. nor Collyer et al. teach the wound healing factor comprises basic fibroblast growth factor and an anti-microbial that is an antibiotic. The Examiner cited Gibbins for teaching the incorporation of basic fibroblast growth factor and an anti-microbial such as streptomycin as one of many active

ingredients that can be incorporated or grafted onto a dressing. And the Examiner further stated that since Collyer et al. teach a pad that can be incorporated with medicament, it would be obvious to provide the combined inventions of Argenta et al. and Collyer et al. with a porous pad having the incorporation of Gibbins.

Claims 1 and 7 are allowable over the cited art for the reasons cited above, and accordingly, dependent claims 2-5 and 11 are allowable for the same reasons.

In addition, it is important to note that an immobileized agent on the dressing fibrils' surfaces is only effective upon cells or microbes that come in contact with it. This is even recognized in the teaching of Gibbins. While Gibbins may have had some limited functionality at the few contact points where its material touched down upon the wound surface, or upon cells/microbes which have migrated into the bulk of the dressing material, the present invention is significantly different and provides a significantly different result. Specifically, the present invention as claimed results in the negative pressure action actually causing tissues to be drawn up into the microrecesses of the porous foam and achieve a much higher level of intimate contact, as opposed to the teaching of few contact points of Gibbins.

Neither Gibbins alone, nor Gibbins in combination with Argenta et al. nor Collyer et al. teach, motivate or otherwise disclose the invention of claims 2-5 and 11. Accordingly, these claims are submitted to be in condition for allowance.

### 3. Rejection of Claims 8-10 Under 35 U.S.C. 103(a)

Claims 8-10 have been canceled.

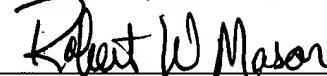
**SUMMARY**

Believing it has addressed all matters raised by the Examiner's July 26, 2004 Office Action, Applicants respectfully request timely action on the merits. No fees are believed to be required for the amendment. Nevertheless, the Commissioner is permitted to deduct or credit any fees that may be required from Kinetic Concept Inc. Deposit Account No. 500-326.

If upon consideration of the above, the Examiner should feel that outstanding issues remain in the present application that could be resolved, the Examiner is invited to contact the undersigned at the telephone number indicated to discuss resolution of such issues.

Applicants respectfully request favorable consideration.

Respectfully submitted,

  
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